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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JERRY FLAGG,
Plaintiff,
v.
JO ANNE B. BARNHART,
Commissioner of Social Security,
Defendant.)
) CIVIL NO. 06-00930 SBA
) STIPULATION AND ORDER OF
) REMAND
)

The Commissioner has notified the United States Attorney's Office that the Commissioner is unable to locate Plaintiff's claim file. The Commissioner of Social Security has, therefore, requested remand under Sentence 6 of 42 U.S.C. 405(g) in order to remand the claim to an Administrative Law Judge (ALJ) for reconstruction of the administrative record and to hold another hearing and issue a new decision.

Pursuant to section 205(g) of the Social Security Act, 42 U.S.C. 405(g):

The court may, on motion of the Commissioner made for good cause shown before he files his answer, remand the case to the Commissioner for further action by the Commissioner .

³ See *Melkonyan v. Sullivan*, 501 U.S. 89, 101 n.2 (1991); *Shalala v. Schaefer*, 509 U.S. 292 (1993).

The joint conference committee of Congress in reporting upon the Social Security Disability Amendments of 1980 (to the Social Security Act) stated that in some cases procedural difficulties,

1 such as an inaudible hearing tape or a lost file, necessitate a request for remand by the Secretary. The
2 intent of the committee was that such procedural defects be considered "good cause" for remand.

3 The committee states:

4 Such a situation is an example of what could be considered 'good cause' for remand.
5 Where, for example, the tape recording of the claimant's oral hearing is lost or
6 inaudible, or cannot otherwise be transcribed, or where the claimant's files cannot be
located or are incomplete, good cause would exist to remand the claim to the
Secretary for appropriate action to produce a record . . . (H.R. Rep. No. 96-944, 96th
Cong., 2d Sess. 59 (1980)).

7 Good cause having been shown, the parties agree that this action should be remanded to the
8 Commissioner of Social Security for further proceedings. Upon receipt of the Court's order of
9 remand, the Appeals Council will remand the case to an Administrative Law Judge for reconstruction
10 of the administrative record. The ALJ will then hold a *de novo* hearing and issue a new decision.
11 Defendant will respond to Plaintiff's complaint in this Court when Plaintiff's record is complete
12 and/or when an administrative transcript is prepared.

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15
16 Dated: June 23, 2006

/s/
TONY ARJO
Attorney for Plaintiff

18 KEVIN V. RYAN
United States Attorney

20
21 Dated: June 23, 2006

By: /s/
SARA WINSLOW
Assistant United States Attorney

22 PURSUANT TO STIPULATION, IT IS SO ORDERED that this action is remanded, pursuant to
23 sentence six of 42 U.S.C. 405(g), to the Commissioner for further proceedings as stated above.

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26
27 Dated: 8/9/06


SAUNDRA B. ARMSTRONG
United States District Judge

FLAGG, REMAND STIP S6 (dmm)
C 06-00930 SBA